

DRAFT Ordinance No. O-01-2020

Introduced: 02-10-2020

Adopted:

**SUBJECT:** AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF KENSINGTON AMENDING CHAPTER VI, ARTICLE I, “SIGNS AND SOLICITORS”, SECTIONS 6-101, “SIGNS”; 6-102 “TOWN SIGN PERMIT REQUIRED”; 6-103, “SIGNS IN THE PUBLIC RIGHT OF WAY”; 6-104 “SIGNS ON PRIVATE PROPERTY – CRT, CRN AND INDUSTRIAL ZONES” AND 6-106, “ENFORCEMENT AND PENALTIES” TO IDENTIFY THE TYPES OF SIGNS THAT ARE AUTHORIZED AND ARE REQUIRED TO BE PERMITTED, EXPAND THE PROHIBITION ON POLE SIGNS, TO REGULATE LIMITED DURATION SIGN ON PRIVATE PROPERTY, TO CLARIFY THAT ALL ILLUMINATED SIGNS ARE REGULATED IN THE SAME MANNER AND TO MAKE CONFORMING CHANGES.

**WHEREAS**, pursuant to §5-201 *et seq.* of the Local Government Article, Annotated Code of Maryland, the Town of Kensington (hereinafter, the “Town”) has the power to pass such ordinances as it deems necessary to protect the health, safety and welfare of the citizens of the municipality and to prevent and remove nuisances; and

**WHEREAS**, pursuant to the Land Use Article, Annotated Code of Maryland the Town is authorized to adopt additional or stricter commercial sign regulations than are otherwise imposed by the State, the Maryland National Capital Park and Planning Commission, or Montgomery County; and

**WHEREAS**, the Mayor and Council have determined that it is in the public interest and will promote the preservation, improvement and redevelopment of the Town’s commercial areas to adopt certain sign regulations; and

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CAPS : Indicate matter added to existing law.

[Brackets] : Indicate matter deleted from law.

Asterisks \* \* \* : Indicate matter remaining unchanged in existing law but not set forth in Ordinance.

CAPS : Indicate matter added in amendment

[Brackets] : Indicate matter deleted in amendment

**WHEREAS**, the Mayor and Council have determined that clarification with respect to A-frame and sandwich signs requirements, permitting requirements, and signs in the right of way, a reduction in the landscape requirement and a revision of the length of time that a limited duration sign may be posted in the right of way are appropriate and in the public interest.

**Section 1.** NOW THEREFORE, BE IT ORDAINED AND ENACTED, by the Mayor and Council of the Town of Kensington, Maryland that Chapter 6, “Signs” Article 1 “Signs and Solicitors”, Section 6-101 “Signs” of the Code of the Town of Kensington be, and is hereby, repealed and re-enacted with amendments to read as follows:

Section 6-101. Signs

(a) The Town shall have the power to enforce, and incorporates by reference herein as if fully set forth, the provisions of Chapter 59, Article 59-6, Division 6.7 of the Montgomery County Code, as amended, entitled "Signs", except as otherwise provided herein. This Article is an exception to the general exemption from County law contained in Section 1-202 of this Code.

(b) The purpose of Sections 6-101 through 6-106 of this Article is to regulate the location, size, placement and certain features of signs placed in the public right of way, and in commercial and industrial zoned properties. These regulations do not apply to signs in a residential zone, unless specifically stated. These regulations are intended to protect the public health, safety, comfort and welfare, to enable the public to locate goods, services and facilities without difficulty, danger or confusion, to prevent hazards to life and property, and to preserve and strengthen the character of the town and to protect property values.

(c) The following sections contain additional requirements that supplement portions of Chapter 59, Article 59-6, Division 6.7, of the Montgomery County Code and, in cases of conflict, shall supersede and take precedence over Chapter 59, Article 59-6, Division 6.7, of the Montgomery County Code.

(D) ONLY SIGNS DEFINED AS PERMANENT OR LIMITED DURATION SIGNS ARE AUTHORIZED. TEMPORARY SIGNS ARE PROHIBITED. PERMANENT SIGNS ARE DEFINED AS A SIGN, REQUIRING A PERMIT FROM MONTGOMERY COUNTY, THAT IS CONSTRUCTED IN A MANNER AND OF MATERIALS THAT WILL WITHSTAND LONG-TERM DISPLAY AND IS INTENDED TO BE DISPLAYED FOR AN INDEFINITE PERIOD OF TIME. A LIMITED DURATION SIGN IS DEFINED AS A NON-PERMANENT SIGN THAT IS:

(1) DISPLAYED ON PRIVATE PROPERTY, AND IS CONSTRUCTED IN A MANNER AND OF MATERIALS THAT WILL NOT WITHSTAND LONG-TERM DISPLAY, AND/OR IS NOT INTENDED TO BE DISPLAYED FOR AN INDEFINITE PERIOD; OR

(2) WITHIN THE PUBLIC RIGHT-OF-WAY.

**Section 2.** BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington that, Chapter 6, “Signs and Commercial Regulations” Article 1 “Signs and Solicitors”, Section 6-102 “Town Sign Permit Required” of the Code of the Town of Kensington be, and is hereby, repealed and re-enacted with amendments to read as follows:

Section 6-102. Town Sign Permit Required – CRT, CRN and Industrial Zones

(a) THE PERMITTING REQUIREMENTS OF THIS CHAPTER DO NOT EXEMPT ANY APPLICANT FROM OBTAINING PROPER PERMITS FROM MONTGOMERY COUNTY AS REQUIRED BY COUNTY LAW.

(b) It shall be unlawful to erect, construct, POST, MOUNT, locate, place or alter any permanent sign or part thereof, AND ANY LIMITED DURATION SIGN OR PART THEREOF ~~[or any A-frame type sign or sandwich type sign]~~, without first obtaining a sign permit from the Town. A permit application, together with a copy of plans and specifications for the work and any required fee, shall be filed with the Town Manager or designee, who shall issue a permit in accordance with the provisions of the Town code. THE PERMIT SHALL INCLUDE DATE OF ISSUANCE. By application for a sign permit, the applicant and owner give consent to the Town Manager or designee to enter onto the property to inspect any activity encompassed in the permit as often and at such times as deemed necessary during the course of the activity to ensure compliance with this chapter and other applicable law. Applicants must provide the Town with any information deemed necessary to process the permit.

~~[(b) The permitting requirements of this Chapter do not exempt any applicant from obtaining proper permits from Montgomery County as required by County law.]~~

(c) Permit fees shall be set by resolution of the Council.

(d) The date of erection of any limited duration sign must be written in indelible ink on the lower right corner of the sign.

**Section 3.** BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington that, Chapter 6, “Signs and Commercial Regulations” Article 1 “Signs and Solicitors”, Section 6-103 “Signs in the Public Right-of-Way” of the Code of the Town of Kensington be, and is hereby, repealed and re-enacted with amendments to read as follows:

Section 6-103. Signs in the Public Right-of-Way.

- (a) Except as otherwise provided herein, it shall be unlawful to display or post any sign in a public right of way under the Town's jurisdiction.
- (b) It ~~[shall be]~~ IS unlawful to attach any otherwise lawful sign to utility poles, trees, fences or other signs in the public right of way.
- (c) It shall be lawful to post or mount limited duration signs in the public right of way from 10:00 a.m. on Friday through 5:00 p.m. the following Sunday. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IT IS PROHIBITED AT ALL TIMES TO POST OR MOUNT ANY SIGN IN THE MEDIAN OF A PUBLIC RIGHT-OF-WAY. Signs authorized by this Section may not be installed or removed in a manner that will cause damage to the right of way. Authorized signs may not block or obstruct any permanent signage, ~~[nor may they obstruct]~~ OR pedestrian or vehicular traffic or sightlines.
- (d) Any otherwise lawful sign required by law or regulation, and signs used by a government agency or utility company erected by, or on the order of, a public officer or utility official in the performance of official duties, such as controlling traffic, identifying streets, warning of danger, or providing information, is exempt from this section.
- (e) All signs posted in violation of this section shall be considered a nuisance and are removable without notice by a public or governmental official at any time thereafter, unless said signs have been authorized to remain by the town government.

**Section 4.** BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington that, Chapter 6, "Signs and Commercial Regulations" Article 1 "Signs and Solicitors", Section 6-104 "Signs on Private Property" of the Code of the Town of Kensington be, and is hereby, repealed and re-enacted with amendments to read as follows:

Section 6-104. Signs on Private Property – CRT, CRN and Industrial Zones

- (a) Comprehensive Signage Plan Required – Before a permit may be issued under this Article for properties within the CRT, CRN and Industrial Zones, for properties occupied by more than one (1) business/tenant, a signage plan must be filed demonstrating that each sign for which a permit is requested is consistent and harmonious in terms of location, design, color, shape, size, style, material, and mounting with all other such signs on the property. Signs for individual businesses/tenants in a multi-tenanted building shall be placed only on the BUILDING LEVELS ACCESSIBLE ON THE EXTERIOR BY pedestrianS ~~[levels of the building]~~. A signage plan for the entire property shall be submitted by the owner prior to the issuance of the first sign permit for the property and shall be updated to include all existing and proposed signs when any sign is installed, altered or replaced.
- (b) Prohibited Signs - The following sign types are prohibited:

(1) Internally illuminated box signs with flat graphics and/or translucent face material are prohibited.

(2) Pole (freestanding) signs, except when ~~[(a)] located at retail shopping centers and grocery stores with greater than one hundred (100) parking places. Retail shopping centers [ and grocery stores ] will be allowed only one pole sign each; or~~ [(b)] located in the Kensington Historic District, when the Historic Preservation Commission has made a determination that the sign is an integral part of the environmental setting or is important to the historic character of the neighborhood. ONE POLE SIGN LOCATED AT A GROCERY STORE THAT WAS LAWFULLY EXISTING IMMEDIATELY PRIOR TO FEBRUARY 1, 2020, BUT WHICH DOES NOT CONFORM TO THE REQUIREMENTS AS NOW CONSTITUTED OR AS THEY MAY HEREAFTER BE AMENDED FROM TIME TO TIME, MAY REMAIN BUT SHALL BE REMOVED OR MODIFIED TO COME INTO COMPLIANCE WITH THIS ARTICLE WITHIN FIVE (5) YEARS FROM FEBRUARY 1, 2020. ONE POLE SIGN LOCATED AT A SHOPPING CENTER WITH GREATER THAN ONE HUNDRED (100) PARKING PLACES THAT WAS LAWFULLY EXISTING IMMEDIATELY PRIOR TO FEBRUARY 1, 2020, BUT WHICH DOES NOT CONFORM TO THE REQUIREMENTS AS NOW CONSTITUTED OR AS THEY MAY HEREAFTER BE AMENDED FROM TIME TO TIME MAY REMAIN, BUT SHALL BE REMOVED OR MODIFIED TO COME INTO COMPLIANCE WITH THIS ARTICLE WITHIN TWENTY (20) YEARS FROM FEBRUARY 1, 2020 OR SUCH TIME AS THE PROPERTY IS REDEVELOPED, WHICHEVER FIRST OCCURS.

(3) Internally illuminated signs (except as provided herein);

(4) Portable signs or flashing or scrolling signs.

(5) Illuminated signs in the R-60 Zone.

(6) ~~[A-frame type signs or sandwich signs unless they meet the following conditions:~~

~~(a) Can only be utilized during the hours of operation, on the site where the business is located, and must be removed at the close of business each day;~~

~~(b) Cannot exceed six (6) square feet per side, regardless of how connected or viewed;~~

~~(c) Cannot be placed in the public right of way and must provide a clear unobstructed path for use by pedestrians to and from the establishment and must meet the Americans with Disabilities Act Requirements; and~~

~~(d) Must be constructed and anchored in a manner to achieve wind grade certification. Examples of acceptable A-frame signs are attached as Figure 1.~~

~~(e) Must be permitted by the Town as a limited duration sign.]~~

VEHICLES THAT ARE PRIMARILY USED AS AN APPARATUS OR SUPPORT FOR ADVERTISING, THAT ARE PARKED OR LOCATED ON PRIVATE PROPERTY IN SUCH A WAY AS TO BE VISIBLE FROM BEYOND THE PROPERTY LIMITS AND SERVE AS AN ADVERTISEMENT OF A BUSINESS LOCATED AT THE PROPERTY.

(c) Ground freestanding signs – Ground freestanding signs measuring less than six (6) feet in height and fifty (50) square feet in area, and including a landscaped area at the base of the sign measuring a minimum of one square foot for each square foot of sign area, are permitted. Only one ground freestanding sign shall be permitted per recorded lot. Once installed, landscaping must be properly maintained IN ACCORDANCE WITH APPROVED PLANS.

(d) Illumination (External) - Exterior sign illumination shall be discrete, uniform, and compatible with the architecture of the structure. The light source shall only illuminate the sign and shall not glare, reflect, or shine onto public ways, streets, park areas, or residential properties. Sign illumination must use an enclosed lamp design or indirect lighting from a shielded source in a manner that prevents glare from beyond the property line. The light source shall be shielded or controlled in a manner so that it does not generally shine above or beyond the sign. EXCEPT IN THE CRT AND CRN ZONE, On properties abutting, contiguous or confronting, or within 150 feet of, a residential property or use, all signage illumination light sources (including neon) must be turned off when the business is not open for public access or before 10:00 p.m. daily, whichever occurs first.

(e) Illumination (Internal) – Only internal, HALO, or backlit illumination signs composed of individually mounted channel letters, or in box signs with opaque face panels that utilize routed push-through or LED text or overlay translucent text material ARE PERMITTED. Individual letters shall be mounted directly to the building or on raceways or tracks attached to the building are permitted. INTERNAL SIGN ILLUMINATION SHALL BE DISCRETE, UNIFORM, AND COMPATIBLE WITH THE ARCHITECTURE OF THE STRUCTURE. THE LIGHT SOURCE SHALL ONLY ILLUMINATE THE SIGN AND SHALL NOT GLARE, REFLECT, OR SHINE ONTO PUBLIC WAYS, STREETS, PARK AREAS, OR RESIDENTIAL PROPERTIES. SIGN ILLUMINATION MUST USE AN ENCLOSED LAMP DESIGN OR INDIRECT LIGHTING FROM A SHIELDED SOURCE IN A MANNER THAT PREVENTS GLARE FROM BEYOND THE PROPERTY LINE. THE LIGHT SOURCE SHALL BE SHIELDED OR CONTROLLED IN A MANNER SO THAT IT DOES NOT GENERALLY SHINE ABOVE OR BEYOND THE SIGN. EXCEPT IN THE CRT AND CRN ZONE, FOR PROPERTIES ABUTTING, CONTIGUOUS OR CONFRONTING, OR WITHIN 150 FEET OF, A RESIDENTIAL PROPERTY OR USE, ALL SIGNAGE ILLUMINATION LIGHT SOURCES (INCLUDING NEON) MUST BE TURNED OFF WHEN THE BUSINESS IS NOT OPEN FOR PUBLIC ACCESS OR BEFORE 10:00 P.M. DAILY, WHICHEVER OCCURS FIRST.

(F) COUNTY REGULATIONS WITH RESPECT TO INDIVIDUAL AND TOTAL SIGN AREA APPLY TO PERMANENT AND LIMITED DURATION SIGNS, EXCEPT AS OTHERWISE SET OUT HEREIN. A LIMITED DURATION SIGN OR SIGNS THAT MEASURE OR EXCEED A TOTAL OF TEN (10) SQUARE FEET IN SIZE, OR ARE

PLACED MORE THAN FIVE (5) FEET FROM THE FACE OF THE MAIN BUILDING, MAY BE PLACED ON PRIVATE PROPERTY FOR NOT MORE THAN SIXTY (60) DAYS IN ANY CALENDAR YEAR. NO TIME LIMIT APPLIES TO LIMITED DURATION SIGNS THAT MEASURE LESS THAN A TOTAL OF TEN (10) SQUARE FEET AND ARE LESS THAN FIVE (5) FEET FROM THE FACE OF THE MAIN BUILDING. ONE SIGN IS ALLOWED PER PERMIT, WITH A MAXIMUM OF FOUR PERMITS AT ANY ONE TIME. MULTIPLE LIMITED DURATION SIGNS THAT ARE SIMILAR MAY NOT BE USED TO ENLARGE THIS TIME LIMITATION. MULTIPLE SIGNS THAT ARE SIMILAR MAY NOT RECEIVE A PERMIT FOR THE SAME LOCATION. THE MAXIMUM SIGN AREA OF EACH SIGN IS FIFTY (50) SQUARE FEET WITH A MAXIMUM TOTAL SIGN AREA OF ONE HUNDRED (100) SQUARE FEET.

~~(F)~~ (G) Allowable Signage Calculations – Signage calculations shall include exterior signage of all types including permitted neon signs. Symbols, letters and logos count towards total signage. Properties abutting or confronting residential property shall be limited to one (1) square foot of signage for each lineal foot of building frontage.

~~(G)~~ (H) Applicability – This section applies only to signs in the CRT, CRN and Industrial zones, except where specifically noted. All new commercial signage, repairs to existing signage, changes to sign text, tenancy changes, property ownership changes, business name changes, or use changes must comply with this Article. Whenever an existing sign is altered, it shall be modified to bring it into conformance with this chapter. Whenever any existing business/tenant/owner erects a new or additional sign, all signs on the premises pertaining to that business/tenant/owner shall be modified to bring them into conformance with this chapter. Any pole sign lawfully existing immediately prior to September 1, 2009 that did not conform to the requirements of this section on that date shall be removed or modified to come into compliance with this article. Signs installed by the Town of Kensington or signs at fire stations and public libraries and schools, any sign required by law or regulation by a governmental agency or utility company erected by, or on the order of, a public officer or utility official in the performance of official duties, such as signs controlling traffic, identifying streets, warning of danger, or providing information, are exempt from This section, but not from the application of Chapter 59, Article 59-6, Division 6.7 of the Montgomery County Code.

~~(H)~~ (I) Additional Restrictions for Signs within the Historic Commercial District (Howard Avenue, Armory Avenue, Fawcett Street, St. Paul Street, and Montgomery Avenue) - The following types of signs are not permitted in the historic commercial district unless a variance is granted by the Council:

(1) Internally illuminated signs.

(2) Neon signs or neon decorations.

~~(I)~~ (J) Interior Window Coverage - The maximum total area of interior window signs

shall not exceed twenty percent (20%) of the glass area for THAT PART OF each side of the building OCCUPIED BY THE PREMISES OR UNIT, MINUS THE AREA OF ANY PERMANENT WINDOW SIGNS.

~~(j)~~ (K) Permitted pole signs – Permitted pole signs shall include a landscaped area at the base of the sign measuring a minimum of one square foot for each square foot of sign area. Once installed, landscaping must be properly maintained IN ACCORDANCE WITH APPROVED PLANS.

~~(k)~~ (L) Variance Procedure - If a signage permit application is denied by the Town, an applicant may seek a Variance from this section within 15 days of the date of denial. A variance may not be granted for the erection, installation or maintenance of a sign prohibited by Section 6-104(b) OR MONTGOMERY COUNTY CHAPTER 59- 6, DIVISION 6.7. THE TOWN MAY ESTABLISH A DETAILED VARIANCE APPLICATION, CHECKLIST AND CHARGE FEES FOR THE CONSIDERATION OF VARIANCES REQUESTS. A variance may be granted when the Council finds that:

(1) strict application of the Town regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property or owner of such sign;

(2) the variance is the minimum reasonably necessary to overcome any exceptional conditions; and

(3) the variance can be granted without substantial impairment of the intent, purpose, and integrity of this Article. A variance decision must be based on consideration of:

(a) one or more of the following elements: size, shape, color, design elements, location or cost of the sign;

(b) the compatibility of the proposed sign with the surrounding property, the proximity of other signs, and the characteristics of the area; ~~and~~

(c) confirmation that the property and all other signs on the property are in conformance with the Article.

(d) recommendation of the HPC if located in the Historic District and if requested by the Council or offered by the HPC.

(4) Contiguous, confronting and abutting owners must receive notice of the variance application prior to consideration by the Council.

~~(H)~~ (M) Conditions and Revocation - The Council may impose conditions and terms on a sign variance, and may revoke any previously granted sign variance when it determines:



- (1) the applicant supplied inaccurate information to the Council, or
- (2) the terms of the variance set by the Council have not been met or have been violated. ~~[The Council may establish a detailed variance application, checklist and charge fees for the consideration of variances requests. This provision shall not permit the Council to grant a variance allowing any sign prohibited under Montgomery County Chapter 59-6, Division 6.7.]~~

**Section 5.** BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington that, Chapter 6, “Signs and Commercial Regulations” Article 1 “Signs and Solicitors”, Section 6-106 “Enforcement and penalties” of the Code of the Town of Kensington be, and is hereby, repealed and re-enacted with amendments to read as follows:

Section 6-106. Enforcement and Penalties.

- (a) A violation of Section 6-103 shall be a Class F municipal infraction punishable pursuant to Section 10-303 of this Code. Written notice of violation shall be mailed by certified mail to the property owner and tenant occupant (if applicable). Any costs incurred in the removal of prohibited signs by the Town or its designee shall be assessed to the owner of the sign and may be collected as an ordinary debt or in the manner of taxes and shall be a lien on any property belonging to the owner within the Town. For violation assessment and cost reimbursement purposes, the owner shall be considered the individual(s) benefiting from the sign to be determined by phone number, name or address indicated on the sign. In the event the tenant occupant has vacated, the property owner shall be the responsible party.
- (b) A violation of Section 6-102 and 6-104 shall be a Class E municipal infraction punishable pursuant to Section 10-303 of this Code.

**Section 6.** BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington that upon formal introduction of this proposed Ordinance, the Town Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the Town Clerk. The proposed ordinance or a fair summary thereof together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council, shall be:

- a. Posted at the town hall by the next business day;
- b. Posted on the official town website;
- c. Sent to those persons listed on the official town email list /mail subscription service; and

- d. Published once prior to the public hearing in the town newsletter or sent by substitute regular mail to newsletter circulation addresses.

The public hearing shall be held at least fifteen (15) days after introduction and may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard. This Ordinance shall become effective on \_\_\_\_\_ provided that the ordinance or a fair summary thereof is:

- a. Posted at the town hall by the next business day for at least two (2) weeks;
- b. Posted on the official town website;
- c. Sent to those persons listed on the official town email list /mail subscription service; and
- d. Published once in the town newsletter.

**INTRODUCED** by the Mayor and Council of the Town of Kensington, Maryland at a public meeting assembled on the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

**ADOPTED** by the Mayor and Council of the Town of Kensington, Maryland at a public meeting assembled on the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

**EFFECTIVE** the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**ATTEST:**

**TOWN OF KENSINGTON**

By: \_\_\_\_\_

Susan Engels, Clerk-Treasurer

By: \_\_\_\_\_

Tracey Furman, Mayor

**APPROVED AS TO FORM:**

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Suellen M. Ferguson, Town Attorney